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Candace Havens  
Director

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## WORKING SESSION MEMORANDUM

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**DATE:** November 21, 2012

**TO:** Alderman Marcia T. Johnson, Chairman  
Members of the Zoning and Planning Committee

**FROM:** Candace Havens, Director of Planning and Development   
James Freas, Chief Planner for Long-Range Planning  
Seth Zeren, Chief Zoning Code Official

**RE:** #49-11 Ald. Johnson, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of Planning and Development and Commissioner of Inspectional Services review with the Zoning and Planning Committee the FAR data collected during the eight months prior to the new FAR going into effect and the 12 months after. This committee review should occur no less than bi-monthly but could occur as frequently as monthly, based on the permits coming into the departments.

**MEETING DATE:** November 26, 2012

**CC:** Board of Aldermen  
Planning and Development Board  
Donnalyn Kahn, City Solicitor  
John Lojek, Commissioner of Inspectional Services

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### EXECUTIVE SUMMARY

On October 22, 2012, the Planning Department presented an analysis of the impact of the new FAR regulations for single- and two-family dwellings, which went into effect in October, 2011. Overall the results of that analysis demonstrate no discernible impact given the short period of time since the new regulation was adopted and the ongoing effects of the recession on housing construction and renovation in the City. As a result of these findings the Department recommends collecting additional data over the course of another year and considering changes to the FAR at that time, potentially in conjunction with the second phase of the Zoning Reform process, which is expected to begin next fall.

The purpose of this memorandum is to respond to questions and concerns raised during the October 22 meeting. The issues identified were:

1. The potential that the new regulations imposed negative impacts to the development of two-family condominium homes
2. The completeness of the data provided
3. The difficulty of consistent application/interpretation of the regulations in the consideration of Special Permit requests by the Land Use Committee
4. Identification and discussion of other regulatory tools used for similar purposes as the FAR regulations in Newton

(For more information on the history and implementation of the new FAR regulations, see the Planning Department memorandum dated October 19, 2012).

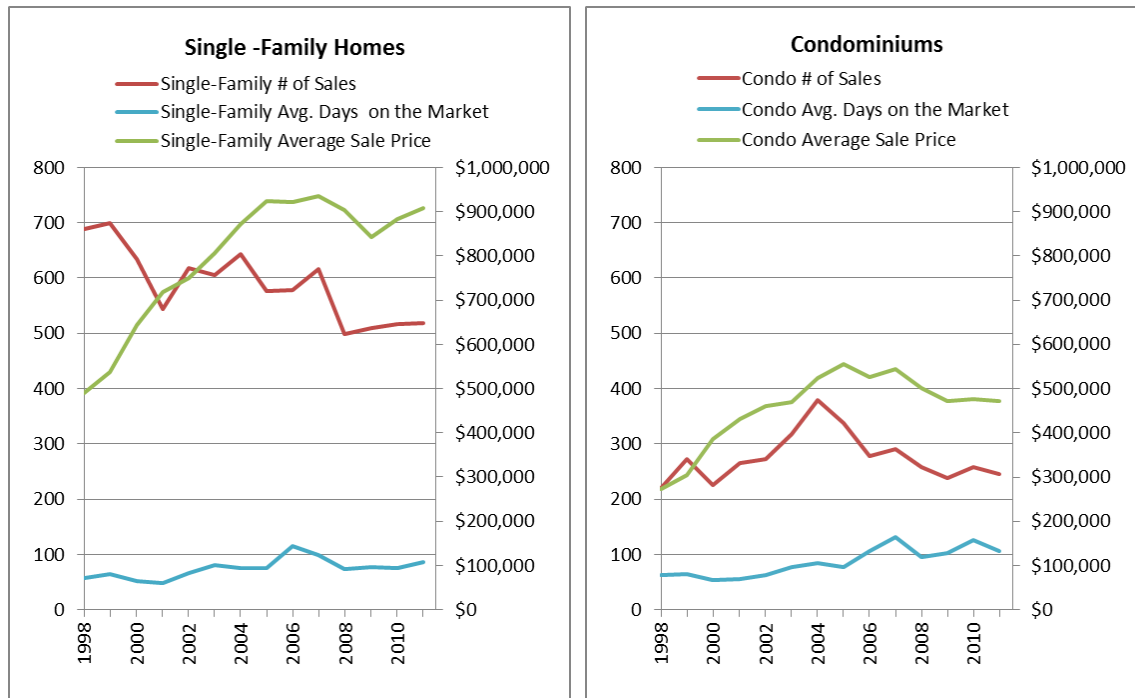
The Planning Department worked with the Inspectional Services Department (ISD) and the Assessing Department staff to compile additional data on building, permitting, and property value trends, broken out by zoning district and property type. ISD permit data shows an increase in overall permit activity with the rate of new construction and major additions roughly constant over the past four years and across the SR1, SR2, SR3, MR1, and MR2 zones. Staff did not find sufficient evidence to indicate a particular harm on the development of new two-family condominiums from the FAR regulations distinct from overall market fluctuations. Much of the data that the City has available for review trails the present by one to two years, making it difficult to see specific impacts from regulatory changes over the past year. For example, new homes sold this year were constructed last year and permitted the year before; similarly, tax assessments are set January 1 and based on sales from the previous year. Therefore, Planning staff continues to believe that there is insufficient data to determine at this time whether or not the new FAR regulations are working as intended or what specific amendments might be desirable.

## **ANALYSIS**

### Potential for Impacts on the Development of Two-Family Homes

A specific concern was raised at the October 22, 2012 meeting that the new FAR regulations were having a disproportionate and negative impact on the construction of new condominiums in two-family structures in the MR1 and MR2 zoning districts as demonstrated by declining sales of such new construction condominiums in the City even as the sale of new construction single-family homes has increased. Planning Department analysis indicates that this apparent decline is likely the result of a range of factors with the City's FAR regulations unlikely to be a significant contributing factor.

First, the overall condominium market in Newton and the region is only beginning to recover from the recession. Planning Department staff obtained sales data for single-family and condominium units in Newton over 1998-2011 using data compiled from the Multiple Listing Service. The following charts show the average sale price, volume of sales, and average days on the market for both single-family homes and condominiums. In both charts the impacts of the financial crisis can be seen in 2007-10. After this period, single-family prices returned to near the pre-crisis peak, while the prices for Condominiums have remained low. Combined with the increase in days on the market after the peak of sales in 2004, the declining sale price for condominiums suggests that a softening market may be more responsible for a decline in construction than a change in the zoning regulations for MR1 and MR2 zones.



Sales trends are not likely to be the best measure of any potential impact from the new FAR regulations because houses that were sold in 2012 would have most likely been permitted in 2011 or 2010, under the interim FAR regulations. Houses permitted under the new FAR rules are still under construction and will not be on the market for at least another year from their permit date. With only one year of data under the new rules, it is impossible to say whether the new regulations have altered the pre-existing market trends. It is clear, however, that the real estate market has affected the sale price of condominium units. With lower condo sale values but only a small decline in assessed property values, it is not surprising that fewer developers think it makes sense to build new construction.

To determine if the number, size, and other characteristics of parcels in the MR zones could be another limiting factor on the development of new condominiums, Planning staff used the GIS database to identify specific parcels suitable for construction of new by-right, two-family dwellings. There are a total of 4,143 parcels in the MR1 and 1,375 parcels in the MR2 zone that range widely in size, age, and value. Staff selected for appropriate properties using the following assumptions:

- House built prior to 1990
- Lot area between 7,000 and 15,000 square feet
- 70 feet of frontage
- An assessed value of less than \$500,000

These assumptions provide for lots that may be developed by right into two-family dwellings that are also likely priced low enough to allow profitable condominium development, based on sales prices derived from the Multiple Listing Services data. The database showed 246 parcels that meet these requirements. Staff also performed another search to identify properties large enough to accommodate two larger, approximately 2,400 square foot units by right, using the following assumptions:

- House built prior to 1990
- Lot area between 10,000 and 15,000 square feet
- 70 feet of frontage

- An assessed value of less than \$500,000

There are only 86 properties that meet these criteria. Based on this analysis, staff suggests that in the long run the overall number of parcels appropriate for redevelopment into by-right two-family condominiums may represent a key constraint on the overall potential for new two-family condominium development.

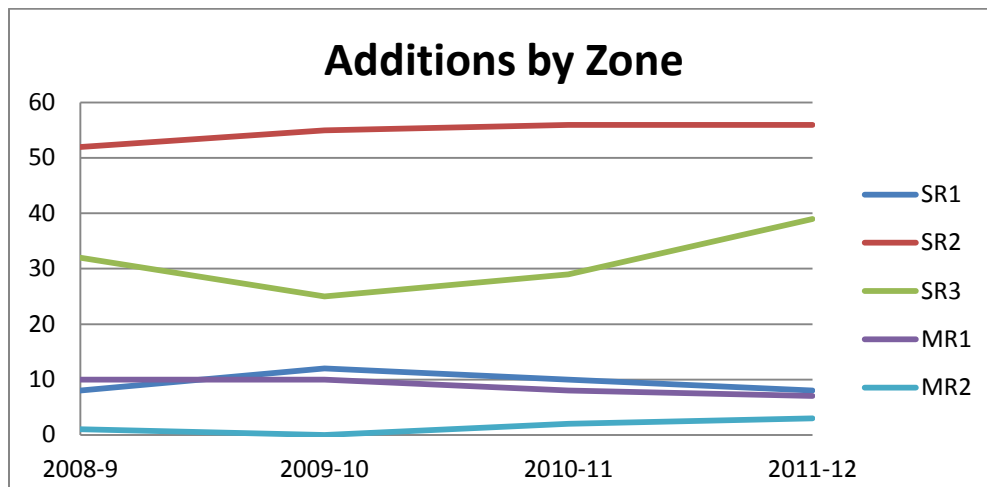
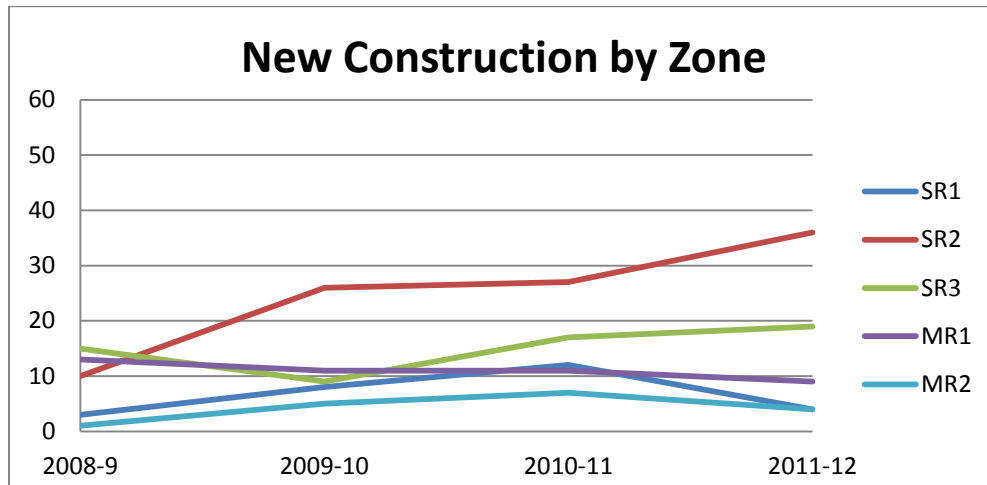
Staff also considered the specific recommendation relative to the issue of potential impacts on the construction of two-family condominium buildings to increase FAR limits by .02 in the MR1 and MR2 zones. Using a representative 10,000 square foot lot in the MR1 zone with a finished basement and third floor and no accessory structures, staff considered what the limits on by-right development would be under the interim rules and the new rules, as shown in the following table. Staff determined that under these assumptions, the by-right allowed area of each dwelling unit has declined by 250 square feet from 3,650 square feet to 3,400 square feet. An additional .02 FAR would raise the maximum area of each dwelling unit in this hypothetical example by 100 square feet to 3,500 square feet.

Assume new development on flat lot with attached garage	Pre Oct. 15 Interim Rules	Post Oct. 15 New Rules
Lot area	10,000	10,000
Allowed FAR	0.40	0.48
Allowed Building Area	4,000	4,800
Additional Exempt 3rd Floor Area	1,300	0
Additional Exempt Finished Basement	2,000	2,000
Area per Dwelling Unit	3,650	3,400

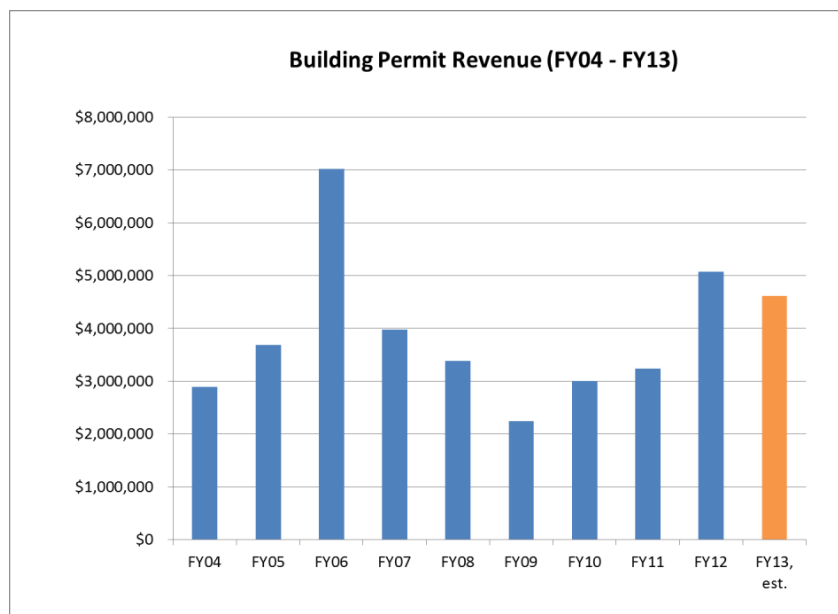
#### Completeness of Data

At the October 22, 2012 meeting Planning Department Staff presented data in a memo dated October 19, 2012 supporting the Department's recommendation that more data be collected over the next year and changes to the FAR regulations be considered at that time. That data included the number of building permits issued over the last two years, building permit revenues from FY04 to FY12, and the number of special permits to exceed FAR limits requested over the last year. The ZAP Committee requested additional information relative to this data including the number of building permits issued by building type and zoning district, complete permit revenue data for FY12. The Committee also requested data relative to the change in assessed value by zoning district over the last several years in residential districts.

The Planning Department was able to distinguish permits issued for new home construction and additions by zoning district over the period from October 2008 to October 2012 (see Attachment A for complete breakdowns). Over the four years, the general trend across all zones was an increase in the number of new homes in the SR2 and SR3 while the number of additions remained roughly flat (see the table below) across all zones. There was no significant difference between the zoning districts over those years when adjusted for the relative number of parcels within each zone—for example, across all zones, approximately 1% of the lots were developed with new homes over the past four years. With only one year of data under the new regulations it is impossible to say whether the new regulations have changed the prior trend.



Planning and ISD staff have examined building permit revenue data for Fiscal Years 2004 to 2013 (see the chart below) which suggest that overall real estate market trends are the driving factor in permit revenues. ISD staff noted that a small number of large commercial permit fees in 2012 (relating to Chestnut Hill Square and Chestnut Hill Shopping Center) increased the overall permit revenue relative to 2013 where fewer large commercial permit fees are expected. This variability limits the City's ability to detect a smaller, long-term impact that might be caused by changes in residential zoning.



To determine if the new regulations have negatively impacted property tax revenue, Planning staff worked with the Assessor's Department to determine if there was any observable change in assessed property values. The following table shows the percentage change in median assessed property value, by zoning district, over the past eight years for approximately 24,000 single- and two-family houses and condominiums. Assessing sets values on January 1 of the year and uses sales from the previous year, therefore, the change in values trails market trends by one to two years. The following general trends can be observed. Over the past eight years property values for houses in single residence (SR) zones have generally increased while those in multi-residence (MR) zones have declined. Condominiums in the MR zones increased significantly in value over the past eight years, particularly among the smaller sample of approximately 600 units located in the MR2 zone.

	Single- and two-family			Condominiums		
	Change in Assessed value over 8 years (2005-2012)	Change in Assessed value over 3 years (2009-2012)	Change in Assessed value over 1 year (2011-2012)	Change in Assessed value over 8 years (2005-2012)	Change in Assessed value over 3 years (2009-2012)	Change in Assessed value over 1 year (2011-2012)
SR1	8.13%	-1.16%	0.56%	2.41%	0.41%	2.44%
SR2	4.67%	-0.56%	1.23%	1.30%	1.92%	3.95%
SR3	4.05%	-1.87%	-0.37%	9.37%	-1.58%	1.13%
MR1	-1.87%	-2.55%	-0.86%	8.22%	0.15%	1.68%
MR2	-8.07%	-2.77%	-1.13%	24.26%	2.89%	3.46%
* Assessment values are a set Jan 1, the year before the fiscal year and are based on sales in the previous year. Therefore, assessed values lag current sales by approximately two years						

\* Change in assessed value for condominiums in the MR2 zone reflects an unusually small sample size of only 600 units with the addition of 58 expensive units over that period, specifically 336-350 Boylston Street and the newer units at 391 Walnut Street.

### Land Use Committee Review

Members of the Land Use Committee present at the October 22, 2012 meeting expressed the challenges they face with regard to interpreting and applying the special permit criteria when considering special permit waivers of the FAR regulations. The Land Use Committee must make a finding that "the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood." Interpretation of these criteria can be difficult for many cases with questions raised around what constitutes the neighborhood, whether size and scale should be measured just from how they appear from the street, and other considerations. Alderman Ted Hess-Mahan has docketed an item for the Land Use Committee to discuss

this issue and consider new requirements for application materials that would assist the Land Use Committee in their deliberations.

#### Other Regulatory Tools

The FAR regulations used in the City of Newton Zoning Ordinance are one approach among many to achieve similar policy objectives for housing and residential neighborhoods as identified in the FAR Working Group Report and the *Comprehensive Plan*. The ZAP Committee requested that Planning Department Staff provide information relative to these other tools and approaches.

Discussions around changes to the FAR regulations have centered on a number of purposes and policy objectives identified in a number of different reports. The original purposes of the FAR Working Group, as articulated in their Final Report, were to:

- Ensure a fairer application of FAR limits by more clearly defining what is included in the calculations of gross floor area and by eliminating exemptions to gross floor area; and
- Ensure a fairer distribution of massing to ensure that smaller lots have some opportunities for minor expansions that would be compatible with the existing character within their neighborhoods.

The policies relative to residential development identified in the *2007 Comprehensive Plan* that have relevance to issues of density and design include:

- Preserving housing diversity to meet different social, economic, and life-cycle needs
- Increasing the number of rental and home-ownership opportunities for low, moderate, and middle income families and senior citizens
- Assuring that lot area per unit, FAR, setbacks, height, and coverage standards are reasonable
- Providing clear guidance about what constitutes excellence of design in each neighborhood
- Avoiding zoning changes that displace existing housing in favor of newer and more costly units in infill development

The new FAR rules were crafted out of a goal of procedural fairness and outcome consistency. The objectives expressed in the *Comprehensive Plan* suggest a larger scope for incremental transformation or preservation of some residential areas to provide for specific housing types and demographics. Furthermore, the Plan suggests a need for guidance around excellence of design, an objective for which FAR is not an appropriate tool. If the City were to implement the recommendations of the *Comprehensive Plan*, a broader reform of residential zoning would be required, along the lines of the comprehensive approach suggested below.

The Zoning Reform Group included the following recommendation for Phase 2 of zoning reform, to begin in the fall of 2013:

- “Consider how to preserve the historic character and scale of Newton’s residential neighborhoods while allowing homeowners to make improvements without undue restrictions. In achieving this, a zoning reform process could examine not only FAR, but also Newton’s old lot/new lot distinction, setbacks, allowed height/stories, frontage, lot size, and/or residential district mapping to ensure that each street or neighborhood is zoned appropriately to its desired character and scale.”

This ZRG recommendation echoes the *Comprehensive Plan*’s goal of balancing preservation of neighborhood character with allowances for reasonable additions and redevelopment, but is more specific in calling for a re-examination of residential districts and every aspect of dimensional and design controls.

While the new calculation of gross floor area is fairer because it includes more aspects of the massing of structures and the sliding scale of FAR limits creates a fairer distribution of development potential, particularly for by-right additions to more modest sized houses on small lots, the new regulations do not specifically address compatibility with the existing character of their neighborhoods or design. To specifically address these concerns, a more comprehensive approach to residential zoning would be required.

At the working session on October 22, the Planning Department expressed a preference for a more comprehensive approach to addressing residential development as part of Phase 2 of zoning reform over further changes to the FAR rules alone at this time. In their initial analysis of residential neighborhoods and development patterns, the FAR Working Group noted that Newton's residential neighborhoods and architectural styles do not fit neatly within existing zoning classifications or regulations. Therefore, additional adjustments to the existing FAR rules or other features of residential zoning without considering the structure of residential districts would perpetuate the problem of unintended and disparate impacts on properties that differ in lot size and shape.

An ideal comprehensive approach would include some or all of the following components:

- **New residential zoning districts**—larger number of districts better matched to specific areas of the city
- **A pattern book**—that documents existing and historic architectural styles and materials and serves as a guide for crafting regulations and illustrating preferred design approaches to residents and developers (for more information see <http://www.urbandesignassociates.com/servicespatternUDA.htm>)
- **Specific neighborhood plans**—that elaborate on the broader vision of the comprehensive plan but prescribe a preferred build out and urban form for each area of the City
- **Form-based standards**—new zoning regulations that incorporate traditional regulations of height, setbacks, lot coverage, FAR, etc. but with more emphasis on design and the relationship of buildings to the street and to each other; form-based zoning employs specific requirements for siting, rooflines, fenestration, articulation, front yard features, etc., rather than subjective architectural review boards to make the process clear and predictable (for more information see <http://www.formbasedcodes.org/> and <http://www.cecilgroup.com/wordpress/news/article-conventional-zoning-vs-form-based-code/>)

This process would require substantial dedicated staff time with the support of expert consultants over a period of one to two years to collect data on neighborhood characteristics, develop a pattern book, create specific development plans for each area, and prepare a new zoning map and form-based regulations. The result would be zoning regulations that respect the character of each neighborhood while permitting new development that furthers the vision of the *Comprehensive Plan* and neighborhood plans.

Staff has recommended that this process should be a key element of Phase 2 of zoning reform because of the time and expertise required for research, engagement, analysis, and drafting and the need for a comprehensive and integrated approach. Furthermore, these new tools would need to be integrated into the new ordinance structure and format that will be created in Phase 1 of zoning reform—which will begin later this fall. The Planning Department does not currently have the resources to undertake the comprehensive approach described above without the consultant resources proposed for Phase 2 of zoning reform. Devoting the staff time and City resources to this issue at this time would delay progress on the larger reform effort. The Zoning Reform Group considered this approach of addressing large issues incrementally in topical clusters, but determined that this approach would ultimately take longer than a single comprehensive reform effort.



**RECOMMENDATION**

The additional analysis performed by staff relating to development impacts by zoning district has not demonstrated a significant impact on new development, City revenues, or property values as a result of the new FAR regulations. Staff believes that more information is required before it is possible to discern whether the new rules will have a significant negative impact or to recommend specific changes to the FAR regulations. Staff believes that energy committed now to ensuring a successful Phase 1 of zoning reform and collecting additional data will be the best way to address residential zoning comprehensively as part of Phase 2 of zoning reform. Staff recommends that #49-11 be held for incorporation into Phase 2 of zoning reform.

**ATTACHMENT A: Building Permit Breakdown by Zoning District**

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\* “addition” and “special permit” represent key word searches among the building permits

SR1	New Construction	Building Permits	"addition"	"special permit"
2008-9	3	115	8	1
2009-10	8	143	12	0
2010-11	12	158	10	2
2011-12	4	151	8	2
TOTAL	27	567	38	5

SR2	New Construction	Building Permits	"addition"	"special permit"
2008-9	10	517	52	2
2009-10	26	607	55	2
2010-11	27	619	56	3
2011-12	36	693	56	5
TOTAL	99	2436	219	12

SR3	New Construction	Building Permits	"addition"	"special permit"
2008-9	15	315	32	1
2009-10	9	361	25	2
2010-11	17	412	29	1
2011-12	19	462	39	0
TOTAL	60	1550	125	4

MR1	New Construction	Building Permits	"addition"	"special permit"
2008-9	13	203	10	0
2009-10	11	228	10	0
2010-11	11	245	8	0
2011-12	9	262	7	4
TOTAL	44	938	35	4

MR2	New Construction	Building Permits	"addition"	"special permit"
2008-9	1	48	1	0
2009-10	5	50	0	0
2010-11	7	54	2	1
2011-12	4	64	3	0
TOTAL	17	216	6	1